

HOUSE BILL NO. 361

INTRODUCED BY B. WISEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE CREATION OF ENERGY IMPROVEMENT DISTRICTS; PROVIDING FOR THE ISSUANCE OF BONDS TO BE USED TO FUND LOANS TO PROPERTY OWNERS WITHIN AN ENERGY IMPROVEMENT DISTRICT FOR THE PURPOSES OF FINANCING ~~THE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES~~ OR ENERGY EFFICIENCY IMPROVEMENTS THAT ARE PERMANENTLY FIXED TO RESIDENTIAL, COMMERCIAL, INDUSTRIAL, OR OTHER REAL PROPERTY; CLARIFYING THE AUTHORITY OF LOCAL GOVERNMENTS TO RENOVATE PRIVATE RESIDENCES FOR ENERGY CONSERVATION AND EFFICIENCY; AMENDING SECTIONS 7-15-2120, 7-15-4102, AND 7-15-4103, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Energy improvement district -- definition. (1) The governing body of a county, an incorporated city or town, or a consolidated government may establish an energy improvement district. The purpose of an energy improvement district is to provide loans to property owners for purposes of financing ~~the installation of distributed generation renewable energy sources or~~ energy efficiency improvements that are permanently fixed to residential, commercial, industrial, or other real property.

(2) The boundaries of the energy improvement district must coincide with the legal boundaries of the local government creating the district. However, a county energy improvement district may exclude the territory of an incorporated city or town if the incorporated city or town has already established an energy improvement district.

~~As used in this (sections 4 through 7), "distributed generation renewable energy sources" means fixtures, products, systems, devices, or interacting groups of devices that are installed behind the meter of a residential, commercial, or industrial building and that produce energy from renewable resources, including but not limited to photovoltaic systems, low thermal systems, small wind systems, biomass systems, or geothermal systems.~~

NEW SECTION. Section 2. Public hearing -- resolution of intention. (1) The governing body shall hold at least one public hearing concerning the creation of a proposed energy improvement district prior to the passage of a resolution of intention to create the district. A resolution of intention to create an energy improvement district must be based upon a decision of the governing body.

(2) The resolution must designate:

- (a) the proposed name of the district;
- (b) the necessity for the proposed district;
- (c) a general description of the territory or lands to be included within the proposed district, giving the boundaries of the proposed district;
- (d) the purpose for the proposed district;
- (e) the estimated cost and method of financing the proposed district; and
- (f) whether the proposed district would be administered by the governing body or an appointed or elected board.

(3) The governing body shall publish notice of passage of the resolution of intention to create an energy improvement district as provided in 7-1-2121 and 7-1-2122 or 7-1-4127 and 7-1-4129, as applicable. The notice must contain a notice of a hearing and the time and place where the hearing will be held.

(4) If a referendum is not held pursuant to [section 3], the governing body shall:

- (a) immediately file with the secretary of state a certificate stating that the energy improvement district was created and record the certificate in the office of the clerk and recorder of the county in which the district is situated; and
- (b) notify any municipalities lying within the boundaries of the district.

NEW SECTION. Section 3. Referendum -- election. (1) The governing body may order a referendum on the creation of the proposed energy improvement district to be submitted to the registered voters who reside within the proposed district.

(2) The referendum must state:

- (a) the type of activities proposed to be financed, including a general description of the program or improvements;
- (b) a general description of the areas included in the proposed district; and

(c) whether the proposed district would be administered by the governing body or an appointed or elected board.

(3) The referendum must be held in conjunction with a regular or primary election or must be conducted by mail ballot election as provided in Title 13, chapter 19.

(4) The proposition to be submitted to the electorate must read: "Shall the proposition to organize (name of proposed energy improvement district) be adopted?"

(5) The referendum must be conducted, the vote canvassed, and the result declared in the same manner as provided by Title 13 with respect to general elections, as far as applicable.

(6) If the referendum is approved, the election administrator of the local government shall:

(a) immediately file with the secretary of state a certificate stating that the proposition was adopted and shall record the certificate in the office of the clerk and recorder of the county in which the energy improvement district is situated; and

(b) notify any municipalities lying within the boundaries of the district.

NEW SECTION. Section 4. Certificate of establishment. (1) Upon receipt of the certificate referred to in [section 3(6)], the secretary of state shall, within 10 days, issue a certificate reciting that the energy improvement district has been established according to the laws of the state of Montana. A copy of the certificate must be transmitted to and filed with the clerk and recorder of the county in which the district is situated.

(2) When the certificate is issued by the secretary of state, the energy improvement district named in the certificate is established with all the rights, privileges, and powers set forth in [section 5].

NEW SECTION. Section 5. Governance -- powers and duties. (1) An energy improvement district must be administered and operated either by the governing body or by a separate elected or appointed board as determined by the governing body.

(2) (a) If the energy improvement district is governed by a separate board, the board must be established in accordance with Title 7, chapter 1, part 2, and specific powers and duties granted to the board and those specifically withheld must be stated.

(b) The governing body may grant additional powers to the board. This includes the authorization to use privately contracted legal counsel or the attorney of the governing body. If privately contracted legal counsel is used, notice must be provided to the attorney of the governing body.

(c) The governing body has ultimate authority under this subsection (2).

(3) The entity chosen to administer the energy improvement district may:

(a) implement a program and order improvements for the district designed to fulfill the purposes of the district;

(b) administer the budget of the district;

(c) employ personnel;

(d) purchase, rent, or lease equipment, personal property, and material necessary to develop an effective district;

(e) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of federal, state, or local government, in order to develop an effective district;

(f) receive gifts, grants, or donations for the purpose of advancing the district and, by gift, deed, devise, or purchase, acquire land, facilities, buildings, and material necessary to implement the purposes of the district;

(g) construct and maintain facilities and buildings necessary to accomplish the purposes of the district;

(h) establish district capital improvement funds pursuant to 7-6-616, maintenance funds, and debt service funds; and

(i) borrow money by the issuance of:

(i) general obligation bonds as authorized by the governing body pursuant to Title 7, chapter 6, part 40, and the appropriate provisions of Title 7, chapter 7, part 22 or 42; or

(ii) revenue bonds for the lease, purchase, and maintenance of land, facilities, and buildings and the funding of projects in the manner and subject to the appropriate provisions of Title 7, chapter 7, part 25 or 44.

(4) The entity chosen to administer the energy improvement district shall submit annual budget and work plans to the governing body for review and approval.

NEW SECTION. Section 6. Loans -- lien. An energy improvement district may make loans to the owners of real property within the district for the purposes of financing ~~the installation of distributed generation renewable energy sources or~~ energy efficiency improvements that are permanently fixed to residential, commercial, industrial, or other real property. The recipient of a loan shall use the loan proceeds for the purpose specified in the loan contract. The loan contract must contain a payment schedule and other provisions that the entity administering the energy improvement district considers

appropriate. The energy improvement district has a lien on the real property on which the loan proceeds are used for the amount of the loan reduced by the payments made on the loan. The lien may be enforced when the property is sold if the loan is not repaid prior to the sale of the property.

NEW SECTION. Section 7. Dissolution of energy improvement district. (1) An energy improvement district may be dissolved if it is considered to be in the best interest of a local government or the inhabitants of the local government or if the purpose for creating the district has been fulfilled and the district is not needed in perpetuity.

(2) The governing body may pass a resolution of intention to dissolve an energy improvement district upon its own request or upon request of a separate board administering the district.

(3) After the passage of the resolution provided for in subsection (2), the clerk of the local government that established the energy improvement district shall publish a notice, as provided in 7-1-2121 or 7-1-4127, of the intention to dissolve the district.

(4) The notice must specify the boundaries of the energy improvement district to be dissolved, the date of the passage of the resolution of intention to dissolve, the date set for the passage of the resolution of dissolution, and that the resolution will be passed unless the clerk of the local government receives written protest in advance from 40% of registered voters or 40% of the owners of real property in the district.

(5) If the energy improvement district is dissolved, the clerk of the local government shall immediately send written notice to the secretary of state, providing the same information required in [section 2] when a district is created.

(6) The dissolution of an energy improvement district may not relieve the property owners from the payment of a sufficient amount to liquidate all charges existing against the district prior to the date of dissolution.

(7) Any assets remaining after all debts and obligations of the energy improvement district have been paid, discharged, or irrevocably settled must be deposited in the general fund of the local government.

(8) If the remaining assets are derived from private grants or gifts that restrict the use of those funds, the funds must be returned to the grantor or donor.

Section 8. Section 7-15-2120, MCA, is amended to read:

"7-15-2120. Authorization for counties to furnish assistance in the rehabilitation of private dwellings. If it has determined that unsanitary, ~~or unsafe, or energy inefficient~~ privately owned dwellings exist in the unincorporated area of the county and it has further determined that the owners of such the dwellings are unable under the prevailing market conditions to finance replacement or rehabilitation of their dwellings without assistance, the board of county commissioners may:

(1) using the funds provided in subsection (2), finance the replacement or rehabilitation of such unsanitary, ~~or unsafe, or energy inefficient~~ privately owned dwellings through the use of grants of funds or property, direct loans, loan guarantees, and any other means;

(2) accept gifts of property or apply for and accept grants, contributions, and any other form of financial assistance from the federal government or the state or other public body or from any other public or private source for the purposes of ~~this section and 7-15-2101~~ and this section; and

(3) enter into and carry out contracts in connection with activities under subsection (1) or (2)."

Section 9. Section 7-15-4102, MCA, is amended to read:

"7-15-4102. Findings and policy with regard to unsanitary, and unsafe, and energy inefficient private dwellings. (1) It is hereby declared that:

(a) unsanitary, ~~or unsafe, and energy inefficient~~ privately owned ~~dwelling accommodations~~ dwellings exist in urban areas throughout the state, and these conditions cause an increase in and spread of disease and crime, ~~and~~ constitute a menace to the health, morals, and welfare of the citizens of the state, and impair economic values;

(b) in many instances, the owners of such the accommodations dwellings, due to poverty, unavailability of credit, and increased costs, are unable to finance the rehabilitation of their dwellings; and

(c) the municipal corporations of the state are uniquely able to render financial assistance to these owners of unsafe, ~~and unsanitary, and energy inefficient~~ dwellings; and such that assistance is a public use and purpose for which public money may be spent.

(2) The necessity for the provisions of 7-15-4103 is hereby declared, as a matter of legislative determination, to be in the public interest."

Section 10. Section 7-15-4103, MCA, is amended to read:

"7-15-4103. Authorization for municipalities to furnish assistance in the rehabilitation of private dwellings. When it has determined that unsanitary, ~~or unsafe, or energy inefficient~~ privately

owned ~~dwelling accommodations~~ dwellings exist within the limits of the city or town and when it has further determined that the owners of such ~~accommodations~~ the dwellings are unable under the prevailing market conditions to finance rehabilitation of their dwellings without assistance, the governing body of any a municipal corporation:

(1) may finance the rehabilitation of ~~such~~ the unsanitary, ~~or unsafe, or energy inefficient~~ privately owned ~~dwelling accommodations~~ dwellings through the use of grants of funds or property, direct loans, loan guarantees, and other means;

(2) may apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government or the state, county, or other public body or from any other public or private source for the purpose of ~~this section and 7-15-4102~~ and this section; and

(3) may enter into and carry out contracts in connection ~~therewith~~ with activities under subsection (1) or (2)."

NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 7, chapter 12, and the provisions of Title 7, chapter 12, apply to [sections 1 through 7].

NEW SECTION. **Section 12. Effective date.** [This act] is effective July 1, 2009.

- END -

Latest Version of HB 361 (HB0361.01)

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Amendments to HB 361

First Reading Copy

Offered by NorthWestern Energy

1. Page 1, lines 6-7.

Following: "FINANCING"

Strike: "THE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES OR"

2. Page 1, line 18.

Strike: "the installation of distributed generation renewable energy sources or"

3. Page 1, lines 24-28.

Strike: Subsection (3) in its entirety

4. Page 4, lines 23-24.

Following: "financing"

Strike: "the installation of distributed generation renewable energy sources or"